

**Implications of the Chemical Weapons (Convention) Bill
for the general public and establishments
that need to acquire or use chemicals**

Introduction

This note sets out the Administration's views on the implications of the Chemical Weapons (Convention) Bill (the CWC Bill) for the general public, as well as for industrial and other establishments that need to acquire or use chemicals.

2. In very general terms, the CWC Bill:
 - (a) bans activities involving chemical weapons; and
 - (b) introduces permit and documentation requirements in respect of permitted activities involving specified chemicals.

Given the distinct difference in the treatment of activities involving chemical weapons and permitted activities involving specified chemicals under the CWC Bill, the respective implications are presented separately below.

Implications of the ban on activities involving chemical weapons

3. "Chemical weapons" in the context of both the Chemical Weapons Convention and the CWC Bill refer to:
 - (a) toxic chemicals¹ and their precursors except where intended for purposes not prohibited under the Convention, as long as the types and quantities are consistent with such purposes;
 - (b) munitions and devices specifically designed to cause death or other harm through the toxic properties of toxic chemicals specified in 3(a) above; and
 - (c) any equipment specifically designed for use directly in connection with the employment of the munitions and devices specified in 3(b) above.

¹ "Toxic chemical" refers to any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

Prohibited activities

4. By virtue of clause 5 of the CWC Bill, **no person shall use, develop, produce, possess, participate in the transfer of any of the articles listed in 3(a) to (c) above, or engage in military preparations for the use of such articles.**

5. We believe clause 5 will not cause disruption to any legitimate activities carried out by the general public or industrial and other establishments that need to acquire or use chemicals. It is inconceivable that a member of the public or an establishment in Hong Kong will need to use, develop, produce, possess or transfer any of the articles listed in 3(b) and 3(c) for legitimate purposes. As regards articles mentioned in 3(a), the chemicals concerned are listed in the three schedules to the Chemical Weapons Convention (the Scheduled chemicals). It is important to note that by virtue of the qualifier “except where intended for purposes not prohibited under this Convention²”, **Scheduled chemicals intended for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes, are not regarded as chemical weapons.** In other words, peaceful activities involving the Scheduled chemicals are not prohibited per se, although they might be subject to certain documentation requirements (detailed below).

6. At the first meeting of the Bills Committee on the CWC Bill, some Members expressed concern about possible uncertainty that might arise from the situation whereby activities involving the Scheduled chemicals might be regarded as prohibited activities or permitted ones depending on the circumstances. They were of the view that while people in industrial, medical, research etc establishments should be able to differentiate chemicals being used as chemical weapons from chemicals being used for peaceful purposes, some members of the public who acquire or possess the Scheduled chemicals might inadvertently contravene clause 5 of the CWC Bill.

7. We believe the chance that innocent citizens are caught by clause 5 of the CWC Bill will be extremely rare having regard to the following considerations:

² “Purposes not prohibited under this Convention” is defined in the Convention to mean -

- (a) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;
- (b) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
- (c) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare;
- (d) law enforcement including domestic riot control purposes.

- (a) the Scheduled chemicals which pose high or significant risk are either hardly or not readily accessible by members of the public; and
- (b) save for very few exceptions³, the Scheduled chemicals are not known to have any household uses; and
- (c) some of the Scheduled chemicals are toxic chemicals the handling of which is beyond the ability of a layman.

It is inconceivable that members of the public would acquire or use the Scheduled chemicals for household or other non-professional uses.

8. It is true that the differentiation between a Scheduled chemical as a chemical weapon and a Scheduled chemical intended for a peaceful purpose will involve a test of the intent. Such element is adopted by the Chemical Weapons Convention itself and is not unique to the CWC Bill. For instance, in the Summary Offences Ordinance, it is stipulated that “*any person who has in his possession any wrist restraint or other instrument or article manufactured for the purpose of physically restraining a person, any handcuffs or thumbcuffs, any offensive weapon, or any crowbar, picklock, skeleton-key or other instrument fit for unlawful purposes, with intent to use the same for any unlawful purpose, shall be [guilty of an offence]*”. To illustrate, for example, a person who brings a knife with him per se is not guilty of an offence; but if he intends to use the knife to cause injury to another person, he can be liable to an offence under the ordinance above.

9. As an added safeguard, clause 29(2) provides that it is a defence if a person charged with an offence relating to clause 5 can prove that he:

- (i) neither knew nor suspected nor had reason to suspect that the article involved was a chemical weapon; or
- (ii) he knew or suspected the article to be a chemical weapon and had taken all reasonable steps to inform an authorised officer of his knowledge or suspicion.

10. All in all, we believe clause 5 will not impose any material burden on the general public or establishments in Hong Kong.

Requirement to report the finding of a chemical weapon

11. Clause 7(1) of the CWC Bill **requires a person to notify an authorised officer of the finding of an article he believes may be a chemical**

³ Very few Scheduled chemicals might be found as an ingredient in small quantities in household products such as shampoo, but such household products cannot possibly fall within the definition of “chemical weapons”.

weapon. It should again be noted that the Scheduled chemicals intended for peaceful purposes are not regarded as chemical weapons and clause 7(1) does not apply to them.

12. As pointed out in our letter of 24 November 2001 in response to the questions raised by the Assistant Legal Adviser, after careful consideration in consultation with the Department of Justice, we intend to introduce an amendment to clause 7(1) by adding “*reasonably*” before “*believes*”. With the proposed amendment, a person’s legal obligation to notify the finding of a chemical weapon will only be triggered if the person has reasonable grounds to believe that the article is a chemical weapon. The amendment will also introduce an objective element into the prosecution process; prosecutors will need to prove what a reasonable man would have believed in the circumstances, rather than to prove what the person charged with the offence actually believes. The proposed amendment is intended to strike a balance between public safety on one hand, and civil liberty on the other.

13. We believe the probability that chemical weapons would be found in Hong Kong is very low, and clause 7(1), especially if amended as mentioned above, will not impose any material burden on the public or establishments in Hong Kong.

Implications of the proposed permit and documentation requirements in respect of permitted activities involving the Scheduled chemicals

14. The Chemical Weapons Convention requires State Parties to make declarations on activities involving the Scheduled chemicals. By way of background, in general these chemicals have the following properties:

- *Schedule 1 chemicals*: Toxic chemicals and precursors which have high potential for use as chemical weapons, and have little or no use for peaceful purposes.
- *Schedule 2 chemicals*: Toxic chemicals and precursors which have the potential for use as chemical weapons and may be used in the production of one or more chemicals listed in Schedule 1 or Schedule 2. They are not produced in large commercial quantities for peaceful purposes.
- *Schedule 3 chemicals*: Toxic chemicals and precursors which may be used as chemical weapons and in the production of one or more chemicals listed in Schedule 1 or Schedule 2. They may be produced in large commercial quantities for peaceful purposes.

The properties of each of the Scheduled chemicals are set out in detail in a separate note forwarded to the LegCo Secretariat vide our letter of 9 May 2002.

15. Taking account of the properties of the Scheduled chemicals and the level of potential risk of such chemicals being used in the development of chemical weapons, the Convention imposes different requirements on activities involving different categories of chemicals. Accordingly, the CWC Bill has different permit and documentation requirements on activities involving different Scheduled chemicals and unscheduled discrete organic chemicals. Having regard to the properties of the chemicals concerned, the findings of the surveys conducted in 1998 and 2001⁴, as well as data captured by the existing licensing system⁵, we believe these requirements will not have any material burden on the general public or establishments that need to acquire or use chemicals. Our assessment is detailed below:

Schedule 1 chemicals

Requirements

- A facility operator needs to obtain a permit, make periodic reports and keep records if, in a year, he is **likely to**:
 - **produce** any Schedule 1 chemicals **irrespective of the quantity**; or
 - **acquire, retain, use or transfer Schedule 1 chemicals** and the total amount of these chemicals **exceeds 100 grams**.

Implications

- Schedule 1 chemicals are hardly accessible by members of the public and it is highly unlikely that an ordinary person would need to acquire or use Schedule 1 chemicals for non-professional purposes. No impact on the general public envisaged.
- We are not aware of any production of Schedule 1 chemicals in Hong Kong. And from information available, over the past few years only a handful of establishments (including research institutes, trading companies and a government department) imported and/or used two Schedule 1 chemicals for medical and research end-uses, and the

⁴ The Government conducted two rounds of surveys among manufacturers, traders, medical and research institutions, testing laboratories etc in November 1998 and June 2001 respectively. In the 1998 survey, 638 establishments were sent the questionnaires and 80% of them responded. In the 2001 survey, 87% of the 527 establishments surveyed responded.

⁵ Currently the import or export of any of the Scheduled chemicals require an import or export licence under the Import and Export Ordinance.

amounts involved were very small (in the range of milligrams). No or little impact on industrial and other establishments envisaged.

Schedule 2 chemicals

Requirements

- A facility operator needs to obtain a permit, make periodic reports and keep records if he is **likely to produce, process, or consume** a Schedule 2 chemical in a year and the total amount of the chemical **exceeds the relevant threshold**⁶.

Implications

- Schedule 2 chemicals are not readily accessible by members of the public, and it is unlikely that an ordinary person would need to acquire or use Schedule 2 chemicals for non-professional purposes. No impact on the general public envisaged.
- In both 1998 and 2001 surveys, only one (same) research institute indicated that it had used two Schedule 2 chemicals for research purpose. Little impact on industrial and other establishments envisaged.

Schedule 3 chemicals

Requirements

- A facility operator needs to obtain a permit, make periodic reports and keep records if he is **likely to produce** a Schedule 3 chemical in a year and the total amount **exceeds 30 tonnes**.

⁶ The threshold for toxic chemicals listed in Schedule 2 is 100 kilograms (except one the threshold for which is 1 kilogram), and the threshold for precursors listed in the same schedule is 1 tonne.

Implications

- The proposed requirement only kicks in when a Schedule 3 chemical exceeding 30 tonnes is to be produced. No impact on the general public envisaged.
- In the 1998 survey, only one factory indicated that it had produced a Schedule 3 chemical (but the amount produced was below 30 tonnes). In the 2001 survey, no establishment indicated that it had produced a Schedule 3 chemical. Little impact on industrial establishments envisaged.

Unscheduled discrete organic chemicals

**Discrete organic chemicals are chemicals belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates.*

Requirements

- A facility operator needs to make a notification and keep records if he produced in the preceding year:
 - any unscheduled discrete organic chemicals and the total amount **exceeded 200 tonnes;**
 - unscheduled discrete organic chemicals that **contain phosphorus, sulphur or fluorine** and the total amount **exceeded 30 tonnes.**

Implications

- The notification requirement will only be triggered when a large amount of discrete organic chemicals was produced. No impact on the general public envisaged.
- The 1998 and 2001 surveys revealed that three factories had produced unscheduled discrete organic chemicals in the year before⁷. Only in one case, the total amount exceeded the threshold. Little impact on industrial establishments envisaged.

⁷ In the 1998 and 2001 surveys, 6 and 2 factories respectively indicated that they had produced hydrocarbons or inorganic gaseous chemicals (which are not subject to the controls under the Chemical Weapons Convention or the CWC Bill). If these factories expand their products to include Scheduled chemicals or unscheduled discrete organic chemicals, they might need to obtain a permit or make a notification depending on the types and quantities of the chemicals.

Conclusion

16. All in all, the Administration believes that the implementation of the CWC Bill will not impose any material burden on the general public, or establishments that need to acquire or use chemicals.

Commerce and Industry Bureau
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